

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>SUNIL NAYYAR, M.D.,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>Case No. 10-CV-135</b>
	:	
<b>v.</b>	:	<b>JUDGE ALGENON L. MARBLEY</b>
	:	
<b>MT. CARMEL HEALTH SYSTEM, <i>et al.</i>,</b>	:	<b>Magistrate Judge King</b>
	:	
<b>Defendants.</b>	:	

**ORDER**

This matter is before the Court on Plaintiff Sunil Nayyar, M.D.’s Motion to Permit the Video Deposition Testimony of Dr. Gregory Rutecki to be Admitted at the Preliminary Injunction Hearing in Lieu of Live Testimony (Doc. 14) and Defendants Mt. Carmel Health System, *et. al*’s Motion to Vacate Preliminary Injunction Hearing (Doc. 15).

Pursuant to the Federal Rules of Civil Procedure, “[a] party may use for any purpose the deposition of a witness, whether or not a party, if the court finds . . . that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness’s absence was procured by the party offering the deposition.” Fed. R. Civ. P. 32(a)(4)(B). Dr. Gregory Rutecki, the former head of medical resident education at Mt. Carmel West, currently lives and works in Mobile, Alabama, more than 100 miles from Columbus, Ohio, and there is no indication that his absence was procured by Plaintiff. As a result, Plaintiff’s Motion as to Dr. Rutecki is **GRANTED**, and his video taped deposition, scheduled to occur on March 1, 2010, will be admitted at the Preliminary Injunction Hearing.

Defendants contend that there is now no need for a Preliminary Injunction hearing because Plaintiff has conceded that there is no immediacy of harm. However, Plaintiff’s

Response to Defendants' Motion (Doc. 16) indicates that Plaintiff still contends that absent injunctive relief, he will suffer immediate harm. Defendants' Motion is therefore **DENIED**, and the Preliminary Injunction hearing will occur, as scheduled, on March 2 and 3, 2010.

**IT IS SO ORDERED.**

/s Algenon L.Marbley  
**Algenon L. Marbley**  
**United States District Court Judge**

**DATED: February 26, 2010**